

FEB 20 2007

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Fax Transmission | February 20, 2007**To:** Mail Stop Amendment
Commissioner of Patents**From:** Murrell W. Blackburn**Fax No.:** 571-273-8300**Fax No.:** 404.954.5099**Phone No.:** 404.954.5100**Total Pages:** 32**E-Mail:** mblackburn@merchantgould.com**Confirmation Via Mail:** ☐ Yes ☒ No**Applicant:** Scott Swix et al.**Examiner:** Hai V. Tran**Serial No.:** 09/892,727**Group Art Unit:** 2611**Filed:** June 27, 2001**Docket No.:** 60027.0018USU1/BS01040**Title:** REMOTE DIAGNOSTIC TOOL FOR A MEDIA DELIVERY NETWORK

The following documents are transmitted in connection with the above-referenced application.

1. Transmittal Sheet **in duplicate** containing Certificate of Facsimile Transmission (2 pages)
2. Sixth Supplemental Information Disclosure Statement containing Certificate of Facsimile Transmission (2 pages)
3. Form 1449 (1 page) and two (2) cited references (26 pages)

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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant: Scott Swix et al. Examiner: Hai V. Tran
Serial No.: 09/892,727 Group Art Unit: 2611
Filed: June 27, 2001 Docket No.: 60027.0018USU1/BS01040
Title: REMOTE DIAGNOSTIC TOOL FOR A MEDIA DELIVERY NETWORK

CERTIFICATE UNDER 37 CFR 1.6(d)

I hereby certify that this paper is being transmitted by facsimile to the U.S. Patent and Trademark Office on February 20, 2007.

By: 

Name: Selina Moore

Mail Stop Amendment
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

39262

PATENT TRADEMARK OFFICE

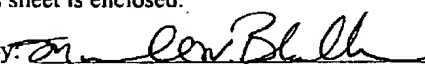
Sir:

We are transmitting herewith the attached:

- ☒ Sixth Supplemental Information Disclosure Statement containing Certificate of Facsimile Transmission (2 pages)
☒ Form 1449 (1 page) and two (2) cited references (26 pages)

Please consider this a PETITION FOR EXTENSION OF TIME for a sufficient number of months to enter these papers or any future reply, if appropriate. Please charge the \$180.00 fee, and any additional fees, or credit overpayment, to Deposit Account No. 13-2725. A duplicate of this sheet is enclosed.

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(PTO TRANSMITTAL - GENERAL)



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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/893,332	06/27/2001	Scott Swix	60027.0017US01/BS01039	2021
39262	7590	09/22/2006	60027.17US01	
MERCHANT & GOULD BELLSOUTH CORPORATION P.O. BOX 2903 MINNEAPOLIS, MN 55402			EXAMINER BILGRAMI, ASGHAR H	
			ART UNIT 2143	PAPER NUMBER

MWB

DATE MAILED: 09/22/2006

Resp OA 3/PTA: December 22, 2006

Response STAT: March 22, 2007

D✓

Please find below and/or attached an Office communication concerning this application or proceeding.

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FEB 20 2007

Office Action Summary	Application No.	Applicant(s)	
	09/893,332	SWIX ET AL.	
	Examiner	Art Unit	
	Asghar Bilgrami	2143	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1) ☒ Responsive to communication(s) filed on 20 June 2006.

2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.

3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4) ☒ Claim(s) 1-9, 11, 12 and 14-22 is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5) ☐ Claim(s) _____ is/are allowed.

6) ☒ Claim(s) 1-9, 11, 12 and 14-22 is/are rejected.

7) ☐ Claim(s) _____ is/are objected to.

8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9) ☐ The specification is objected to by the Examiner.

10) ☒ The drawing(s) filed on 27 June 2001 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a) ☐ All b) ☐ Some * c) ☐ None of:

1. ☐ Certified copies of the priority documents have been received.

2. ☐ Certified copies of the priority documents have been received in Application No. _____.

3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☒ Notice of References Cited (PTO-892)

2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)

3) ☒ Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date 03/29/06

4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____

5) ☐ Notice of Informal Patent Application

6) ☐ Other: _____

U.S. Patent and Trademark Office
PTOL-326 (Rev. 08-06)

Office Action Summary

Part of Paper No./Mail Date 20060820

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DETAILED ACTION

Continued Examination Under 37 CFR 1.114

A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 06/20/2006 has been entered.

Claim Rejections - 35 USC § 112

1. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

2. Claim 16 rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the enablement requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to enable one skilled in the art to which it pertains, or with which it is most nearly connected, to make and/or use the invention.
"Wherein the media distribution device delivers to the media presentation device the portion of the media content stream modified by the local account manager and identified by the local account data module without any immediate changes to the media content stream received at the media distribution device from the media delivery service

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provider thereby allowing the customer to receive instantaneous delivery of only the portion of the media content that is part of the local account while the central account identifies a different portion of the media content stream selected for delivery than the local account. The specification does not describe the above limitation more specifically the portion that states, "While the central account identifies a different portion of the media content stream selected for delivery than the local account".

Claim Rejections - 35 USC § 103

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claims 1-9, 11, 12, 14-22 are rejected under 35 U.S.C. 103(a) as being unpatentable over Thomas et al (US. PUB. 2002/0059627A1).

5. As per claim 1, 16 & 20 Thomas disclosed a media distribution system operative to selectively deliver media content to a media presentation device of a customer, the media distribution system comprising: a media delivery service provider operative to transmit a media content stream to a media distribution device (page.1, paragraph.3); a customer account database, remote from the media distribution device for maintaining a central account associated with the media distribution device, the central account identifying a portion of the media content stream that is selected for delivery to the

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media presentation device (page.6, paragraph.92); to a local account data module for maintaining a local account identifying the portion of the media content stream that is selected for delivery to the media presentation device (page.3, paragraphs.48 & 53); locally blocking a portion of the media content stream not defined in the local account data (Page.1.paragraph.9 and page paragraph, 117) a local account manager, local to the media distribution device (page.4, paragraph. 57), for modifying the portion of the media content stream identified in the local account data module (page.4, paragraph. 61-63); wherein the media distribution device delivers to the media presentation device the portion of the media content stream modified by the local account manager (page.5, paragraphs 69, 70) and identified by the local account data module without any immediate changes to the media content stream received at the media distribution device from the media delivery service provider (page.5, paragraphs 70-73) thereby allowing the customer to receive instantaneous delivery of only the portion of the media content that is part of the local account (page.5, paragraphs 77 & 78) while the central account identifies a different portion of the media content stream selected for delivery than the local account (paragraph. 81). Although Thomas did not explicitly disclose "local account data module" and "local account manager" in the media distribution module (set top box) modifying portion of the media content stream without requiring interaction with the central account data base. However Thomas did disclose that user equipment (set top box) may include sufficient hardware and software capability (local modules) (page.4, paragraph.57) to perform functionality such as to allow user to communicate with his or her system (set top box) (paragraph 63) to view upcoming

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program listing by time or category and customizing the channels etc (page.3, paragraphs.42 & 43, page.5, paragraph.72) and additionally viewing interactive advertisements (movie preview trailers) by navigating the menu rendered by user equipment (the set top box) (page.5, paragraphs 77 & 78) locally without any interaction with the central account database at a remote location. Thomas further describes that that the interaction with remoter server 180 (central account manager) with respect to customer account occurs when the customer selects a purchase button selecting the video on demand program (page.5, paragraph.81). At the time the invention was made it would have been obvious to one in the ordinary skill in the art to have incorporated the local modules that control the local management of the media content received from the media delivery provider in order to provide user with more control over viewing options and flexibility to choose a program according to their desired criteria making the media distribution system more user friendly and versatile.

6. As per claim 2 Thomas disclosed the media distribution device of Claim 1, wherein the media content is delivered over a communication link between the media distribution device and a media delivery service provider (Thomas, page.4, paragraph 56).

7. As per claim 3 Thomas disclosed the media distribution device of Claim 1, wherein the communication link is a broadband connection (paragraph.56).

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8. As per claim 4 & 19 Thomas disclosed the media distribution device of Claim 3, wherein the broadband connection is an asymmetric digital subscriber line (paragraph.58).

9. As per claim 5 Thomas disclosed the media distribution device of Claim 1, wherein the communication link is a satellite connection (paragraph.39).

10. As per claim 6 Thomas disclosed the media distribution device of Claim 1, wherein the local account manager can be remotely controlled (Thomas, page.2, paragraph 41 & page.4, paragraph 59).

11. As per claim 7 Thomas disclosed the media distribution device of Claim 1, wherein the local account manager can be remotely accessed (Thomas, page.2, paragraph 41 & page.4, paragraph 59).

12. As per claim 8 Thomas disclosed the media distribution device of Claim 7, wherein the local account manager can be remotely accessed via the media adapter (Thomas, page.2, paragraph 41 & page.4, paragraph 59 & 61).

13. As per claim 9 Thomas disclosed the media distribution device of Claim 7, wherein the local account manager can be remotely accessed via the data adapter (Thomas, page.2, paragraph 41 & page.4, paragraph 59 & 61).

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14. As per claim 11 Thomas disclosed the media distribution device of Claim 10, wherein the local account data module can be transmitted to the media delivery service provider (Thomas, page.2, paragraph 41 & page.4, paragraph 59).

15. As per claim 12 Thomas disclosed the media distribution device of Claim 11, wherein the media delivery service provider is operative to store the local account data module (Thomas, page.4, paragraph 59 & page.6, paragraph 91).

16. As per claim 14 Thomas disclosed the media distribution device of Claim 13, further comprising a user interface whereby the local account manager can be locally accessed (page.4, paragraph 56 & 63).

17. As per claim 15 Thomas disclosed the media distribution device of Claim 14, wherein the user interface is provided via the media presentation device (page3, paragraph.55).

18. As per claim 17 Thomas disclosed the media delivery system of Claim 16, wherein the local account manager is operative to autonomously transmit the local account data module to the media delivery service provider for storage as the central account (Thomas, page.1, paragraph 8, page.3, paragraph 45 & page.4, paragraph 59).

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19. As per claim 18 Thomas disclosed the media delivery system of Claim 17, wherein the local account data module is transmitted to the media delivery service provider over an asymmetric digital subscriber line (Thomas, page.2, paragraph 41 & page.4, paragraph 59 & 61).

20. As per claim 21 Thomas disclosed the media distribution device of Claim 1, wherein when the local account manager modifies the identification of a portion of the full stream of media content, delivery of media content to the media presentation device is immediately altered without requiring access to or authorization from the media delivery service provider whereby customer account information maintained by the media delivery service provider can be reconciled with the local account data module at a later time (Thomas, page.1, paragraphs 8 & 9).

21. As per claim 22 Thomas disclosed the media delivery system of Claim 16, wherein the media distribution device blocks from being available the media presentation device portions of the media content stream not identified by the local account data module without any immediate changes to the media content stream transmitted by the media delivery service provider (page.5, paragraphs 70-73).

Response to Arguments

22. Applicant's arguments filed 20 June 2006 have been fully considered but they are not persuasive.

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23. The applicant argued that claim 1 recites instantaneous delivery of only the portion that is part of the account without requiring change to the account via interaction with the central customer account manager.

As to applicant's arguments Thomas discloses that once the customer selects a specific on-demand video (specific video stream) using a user purchase code or customer ID (customer account) the movie is delivered instantaneously to the user (i.e. on the display screen of the user's monitor) from the media distribution facility or from any suitable distribution source (Set-top-box since it has the storage capability)(paragraph 81). The preceding video purchase activity is included in the customer's monthly bill, which is updated at the customer account/billing facility ("central customer account manager" as described by the applicant in claim 1). In order to bill the customer for the services used (video on demand in this case) the purchase activity has to be reported to the to the account/billing facility (central customer account manager). Even the applicant admits to this fact in the specification on page 11, lines 20-25 & page 12, lines 4-19) that the customer account modification (purchase of a video) activity is reported/communicated to the centralized customer account database. Additionally the applicant on page 13 lines 16-19 states that "Although the preferable time for transmitting local account data to the customer account management center 310 has been described as being during off-peak hours, it will be appreciated that this transmission can take place at any time."

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Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Asghar Bilgrami whose telephone number is 571-272-3907. The examiner can normally be reached on 9-5.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, David Wiley can be reached on 571-272-3924. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.



AB

JEFFREY PWU
EXAMINER

Notice of References Cited	Application/Control No. 09/893,332	Applicant(s)/Patent Under Reexamination SWIX ET AL.	
	Examiner Asghar Bilgrami	Art Unit 2143	Page 1 of 1

U.S. PATENT DOCUMENTS

*		Document Number Country Code-Number-Kind Code	Date MM-YYYY	Name	Classification
*	A	US-2002/0059621 A1	05-2002	Thomas et al.	725/87
*	B	US-5,914,746 A	06-1999	Matthews et al.	725/132
*	C	US-5,557,320 A	09-1996	Krebs, Mark	725/114
*	D	US-6,973,662 B1	12-2005	Sie et al.	725/25
*	E	US-5,887,494 A	02-1999	Krishnaswamy et al.	370/352
*	F	US-2003/0192060 A1	10-2003	Levy, Kenneth L.	725/133
*	G	US-6,725,460 B1	04-2004	Nishiyama et al.	725/32
*	H	US-6,029,045 A	02-2000	Picco et al.	725/34
	I	US-			
	J	US-			
	K	US-			
	L	US-			
	M	US-			

FOREIGN PATENT DOCUMENTS

*		Document Number Country Code-Number-Kind Code	Date MM-YYYY	Country	Name	Classification
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NON-PATENT DOCUMENTS

*		Include as applicable: Author, Title Date, Publisher, Edition or Volume, Pertinent Pages)			
	U				
	V				
	W				
	X				

*A copy of this reference is not being furnished with this Office action. (See MPEP § 707.05(a).)
 Dates in MM-YYYY format are publication dates. Classifications may be US or foreign.

U.S. Patent and Trademark Office
 PTO-892 (Rev. 01-2001)

Notice of References Cited

Part of Paper No. 20060620



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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/963,779	09/16/2001	Scott Swix	60027.0019US01	.1691
38515	7590	03/10/2006	EXAMINER	
BAMBI FAIVRE WALTERS PO BOX 5743 WILLIAMSBURG, VA 23188			HEWITT II, CALVIN L	
			ART UNIT	PAPER NUMBER
			3021	

DATE MAILED: 03/10/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

PTO-90C (Rev. 10/03)

Office Action Summary

Application No.

09/863,779

Applicant(s)

SWIX ET AL.

Examiner

Calvin L. Hewitt II

Art Unit

3621

— The MAILING DATE of this communication appears on the cover sheet with the correspondence address —

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
 - If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
 - Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 20 January 2006.
- 2a) ☒ This action is FINAL. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 11-16, 20-22 and 25-32 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 11-16, 20-22 and 25-32 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-848) | Paper No(s)/Mail Date: _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date: _____ | 6) <input type="checkbox"/> Other: _____ |

Application/Control Number: 09/963,779
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Page 2

Status of Claims

1. Claims 11-16, 20-22, and 25-32 have been examined.

Response to Arguments/Amendments

2. Applicant has amended the claims to read "*identifying a permanent virtual circuit* of the Media Distribution Device to authenticate the Media Distribution Device for purchasing the media service" (emphasis added). Applicant has also introduced the language of "*if the permanent virtual circuit is authenticated*" (emphasis added), however these two limitations together render claim 11, for example, unclear because it is the Media Distribution Device that is authenticated and not the permanent virtual circuit. Therefore, for purposes of examination, the Examiner is interpreting the claims to read if the Media Distribution Device is authenticated instead of the permanent virtual circuit being authenticated (Specification, page 4, lines 24-26; page 5, lines 1-11). Further, to one of ordinary skill, a permanent virtual connection is understood to be a virtual connection which is not terminated when the connection is not in use. Well known examples, of PVC connections are DSL and cable modem internet connections. Kocher et al. disclose distributing content DSL (column 9, lines 7-15) while Katz et al. teach a system for allowing a delivery device to authenticate

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a distribution device over a permanent virtual connection such as internet access via a cable modem (column 4, lines 42-67; column 8, lines 5-33; column/line 11/55-12/23) and matching a hardware serial number of the distribution device to a registered serial number of a customer record (column 13, lines 12-36). Kocher et al. also disclose distributing encrypted content to a Media Distribution Device (column 7, lines 48-54; column 8, lines 1-6). Therefore, to one of ordinary skill the combined prior art continues to read on Applicant's claimed method and system.

Claim Rejections - 35 USC § 112

3. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

4. Claims 11-16, 20-22, 25 and 26 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 11 recites has been amended to read "*identifying a permanent virtual circuit* of the Media Distribution Device to authenticate the Media Distribution Device for purchasing the media service" (emphasis added). Applicant has also introduced the language of "*if the permanent virtual circuit is authenticated*" (emphasis added), however these two limitations together render claim 11 unclear because it is the Media Distribution Device that is authenticated

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and not the permanent virtual circuit. Claims 23, 25 and 26 recite similar language. Therefore, for purposes of examination, the Examiner is interpreting the claims to read if the Media Distribution Device is authenticated instead of the permanent virtual circuit being authenticated (Specification, page 4, lines 24-26; page 5, lines 1-11).

Claims 12, 13, 15, 16, 20 and 21 are also rejected as they depend from claim 11.

Claim 13 recites "... and wherein the comparing step". However, claim 11 from which claim 13 depends is silent regarding the use of comparison step to authenticate a Media Distribution Device.

Claim Rejections - 35 USC § 103

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

6. Claims 11-13, 20-22, 25 and 26 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kocher et al., U.S. Patent No. 6,289,455 in view of Katz et al., U.S. Patent No. 5,926,624 and Lin et al. 6,282,575.

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As per claims 11-13, 20-22, 25 and 26, Kocher et al. teach a method for purchasing a media service from a Media Delivery Device comprising:

- the sending a request from a from a Media Distribution Device (e.g. computer, set-top box) (column 6, lines 12-27; column 8, lines 21-28; column 9, lines 16-22) to a Media Delivery Device for media service (column 9, lines 1-15)
- uploading a software key and deleting a software key after a predetermined amount of time (column 8, lines 45-55; column 13, lines 10-25; column 20, lines 25-36; column 22, lines 35-55; column 25, lines 43-59)
- billing a customer account for accessing a media service (column 3, lines 35-52)
- determining whether a timer associated with a software key has expired and deleting the software key (column 25, lines 43-59)
- determining whether a conditional software product with a key for decrypting a media service, for display on a display device (column 6, lines 12-27; column 8, lines 21-28; column 9, lines 16-22), is out-of-date and updating the conditional software product (column 25, lines 43-59)

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- communicating an encrypted format of the purchased media service to the Media Distribution Device (column 7, lines 48-54; column 8, lines 1-6)

Regarding the direction of a consumer of media service, such as visual content (column 8, lines 1-6 and 21-28), to a service representative, the Examiner takes Official Notice that instructing a consumer to contact a "help desk" or help personnel is old and well known. Kocher et al. also teach a Media Distribution Device (column 8, lines 21-28; column 9, lines 16-22) connected to a Media Delivery Device (column 9, lines 1-15) over an asymmetric digital subscriber line (column 9, lines 7-15). However, Kocher et al. do not specifically recite authenticating (e.g. determine the consumer's "standing") a Media Distribution Device. Katz et al. teach a system for allowing a delivery device to authenticate a distribution device over a permanent virtual connection such as internet access via a cable modem (column 4, lines 42-67; column 8, lines 5-33; column/line 11/55-12/23) and matching a hardware serial number of the distribution device to a registered serial number of a customer record (column 13, lines 12-36).

Therefore, it would have been obvious to one of ordinary skill to combine the teachings of Kocher et al. and Katz et al. in order to better target devices eligible to receive content ('455, column 13, lines 10-18; column 25, lines 5-14; '624, column 8, lines 29-33; column/line 11/55-12/23).

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7. Claims 14-16 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kocher et al., U.S. Patent No. 6,289,455 in view of Katz et al., U.S. Patent No. 5,926,624 and Lin et al. 6,282,575.

As per claims 14-16, Kocher et al. teach a system for distributing content to a distribution device (column 6, lines 12-27; column 8, lines 21-28; column 9, lines 1-22). Katz et al. teach an authentication protocol for determining whether a device is eligible to receive content (column 8, lines 29-33; column/line 11/55-12/23). However, neither Kocher et al. nor Katz et al. specifically recite using MAC addresses for authenticating consumer devices. Lin et al. (figures 2 and 3; column/line 1/35-2/30; column 4, lines 5-45; column 5, lines 12-45). Therefore, it would have been obvious to combine the teachings of Kocher et al., Katz et al. and Lin et al. in order to authenticate devices adhering to the Ethernet Standard ('575, column 4, lines 5-18) and/or to more efficiently obtain an identifier that uniquely identifies a device in order to securely distribute content ('624, column 12, lines 22-38; '575, column 4, lines 10-17; '455, column 7, lines 65-67).

8. Claims 27-32 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kocher et al., U.S. Patent No. 6,289,455.

As per claims 27-32, Kocher et al. teach a method for purchasing a media service from a Media Delivery Device comprising:

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- the sending a request from a from a Media Distribution Device (column 6, lines 12-27; column 8, lines 21-28; column 9, lines 16-22) to a Media Delivery Device for media service (column 9, lines 1-15)
- uploading a software key and deleting a software key after a predetermined amount of time (column 8, lines 45-55; column 13, lines 10-25; column 20, lines 25-36; column 22, lines 35-55; column 25, lines 43-59)
- billing a customer account for accessing a media service (column 3, lines 35-52)
- determining whether a timer associated with a software key has expired and deleting the software key (column 25, lines 43-59)
- determining whether a conditional software product with a key for decrypting a media service is out-of-date and updating the conditional software product (column 25, lines 43-59)

Regarding the direction of a consumer of media service, such as visual content (column 8, lines 1-6 and 21-28), to a service representative, the Examiner takes Official Notice that instructing a consumer to contact a "help desk" or help personnel is old and well known. Kocher et al. also explicitly recites or at least clearly suggests the existence of a database for maintaining a subscriber record that stores a subscriber name, financial characteristic identifying financial

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standing and a hardware/equipment identifier associated with a communications channel (figures 5 and 6; column 3, lines 35-51; column 8, lines 22-28; column 9, lines 6-16; column/line 11/65-13/10; column 25, lines 43-59; column 27, lines 1-6).

Conclusion

10. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure:

- 'Chapman discloses permanent virtual circuits

11. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will

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the statutory period for reply expire later than SIX MONTHS from the date of this final action.

12. Any inquiry concerning this communication or earlier communications from the Examiner should be directed to Calvin Loyd Hewitt II whose telephone number is (571) 272-6709. The Examiner can normally be reached on Monday-Friday from 8:30 AM-5:00 PM.

If attempts to reach the Examiner by telephone are unsuccessful, the Examiner's supervisor, James P. Trammell, can be reached at (571) 272-6712.

Any response to this action should be mailed to:

Commissioner of Patents and Trademarks
c/o Technology Center 3600
Washington, D.C. 20231

or faxed to:

(571) 273-8300 (for formal communications intended for entry and after-final communications),


or:

(571) 273-6709 (for informal or draft communications, please label "PROPOSED" or "DRAFT")

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Calvin Lloyd Hewitt II
Primary Examiner
March 2, 2006

Notice of References Cited

Application/Control

09/963,779

Applicant's Patent Under

Reexamination
SWIX ET AL

Examiner

Calvin L. Hewitt II

Art Unit

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Page 1 of 1

U.S. PATENT DOCUMENTS

*		Document Number Country Code-Number-Kind Code	Date MM-YYYY	Name	Classification
*	A	US-6,580,718	06-2003	Chapman, Donald Brent	370/409
	B	US-			
	C	US-			
	D	US-			
	E	US-			
	F	US-			
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FOREIGN PATENT DOCUMENTS

*		Document Number Country Code-Number-Kind Code	Date MM-YYYY	Country	Name	Classification
	N					
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	S					
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NON-PATENT DOCUMENTS

*		Include as applicable: Author, Title Date, Publisher, Edition or Volume, Pertinent Pages)
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*A copy of this reference is not being furnished with this Office action. (See MPEP § 707.05(a).)
 Dates in MM-YYYY format are publication dates. Classifications may be US or foreign.

U.S. Patent and Trademark Office
 PTO-892 (Rev. 01-2001)

Notice of References Cited

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